

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Steven Wiggs

(b) County of Residence of First Listed Plaintiff Lehigh
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Benjamin J. Simmons, Esq.
 DeFino Law Associates, P.C.
 2541 S. Broad St., Philadelphia, PA 19148 - Ph: (215) 551-9099

DEFENDANTS

Donald Foley, David Shearn

County of Residence of First Listed Defendant Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
 THE TRACT OF LAND INVOLVED.

Attorneys (*If Known*)**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i> |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i> |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

| | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|--|---|
| <input type="checkbox"/> 110 Insurance | PERSONAL INJURY | PERSONAL INJURY | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 375 False Claims Act |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability | | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 330 Federal Employers' Liability | | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 345 Marine Product Liability | | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 370 Other Fraud | | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 371 Truth in Lending | | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 380 Other Personal Property Damage | | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 190 Other Contract | | <input type="checkbox"/> 385 Property Damage Product Liability | | <input type="checkbox"/> 485 Telephone Consumer Protection Act |
| <input type="checkbox"/> 195 Contract Product Liability | | | | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 196 Franchise | | | | <input type="checkbox"/> 850 Securities/Commodities/ Exchange |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | SOCIAL SECURITY | |
| <input type="checkbox"/> 210 Land Condemnation | <input checked="" type="checkbox"/> 440 Other Civil Rights | Habeas Corpus: | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 463 Alien Detainee | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 443 Housing/ Accommodations | <input type="checkbox"/> 530 General | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 896 Arbitration |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | Other: | | <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision |
| | <input type="checkbox"/> 448 Education | <input type="checkbox"/> 540 Mandamus & Other | | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| | | <input type="checkbox"/> 550 Civil Rights | | |
| | | <input type="checkbox"/> 555 Prison Condition | | |
| | | <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | |
| | | | FEDERAL TAX SUITS | |
| | | | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | |
| | | | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | |
| | | | IMMIGRATION | |
| | | | <input type="checkbox"/> 462 Naturalization Application | |
| | | | <input type="checkbox"/> 465 Other Immigration Actions | |

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983

VI. CAUSE OF ACTION

Brief description of cause:
Defendants maliciously prosecuted Plaintiff by twice arresting him without probable cause.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND \$

500,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S)**

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/13/2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 718 S. Woodward Street, Allentown, PA 18103

Address of Defendant: 2201 Belmont Avenue, Philadelphia, PA 19131

Place of Accident, Incident or Transaction: Philadelphia, PA

RELATED CASE, IF ANY:

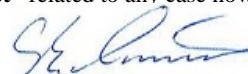
Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|-----------------------------|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/13/2020



314855

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases
(Please specify): _____

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify): _____
- 7. Products Liability
- 8. Products Liability – Asbestos
- 9. All other Diversity Cases
(Please specify): _____

I, Benjamin J. Simmons, Esq., counsel of record or pro se plaintiff, do hereby certify:

- Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- Relief other than monetary damages is sought.



314855

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

| | | |
|------------------|---|--------------|
| Steven Wiggs | : | CIVIL ACTION |
| | : | |
| v. | : | |
| Donald Foley and | : | |
| David Shearn | : | NO. |

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

| | | |
|------------------------------|------------------------------------|---------------------------------|
| 5/13/2020 | Benjamin J. Simmons, Esq. | Plaintiff |
| <hr/> Date <hr/> | <hr/> Attorney-at-law <hr/> | <hr/> Attorney for <hr/> |
| (215) 551-9099 | (215) 551-4099 | bsimmons@definolawyers.com |
| <hr/> Telephone <hr/> | FAX Number | E-Mail Address |

**UNITED STATES COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---------------------------|---|--------------------|
| STEVEN WIGGS | : | |
| 718 South Woodward Street | : | |
| Allentown, PA 18103 | : | |
| Plaintiff, | : | No. |
| v. | : | |
| DONALD FOLEY | : | |
| 2201 Belmont Avenue | : | COMPLAINT AND |
| Philadelphia, PA 19131 | : | <u>JURY DEMAND</u> |
| and | : | |
| DAVID SHEARN | : | |
| 2201 Belmont Avenue | : | |
| Philadelphia, PA 19131 | : | |
| Defendants. | : | |

PLAINTIFF'S COMPLAINT IN CIVIL ACTION

PRELIMINARY STATEMENT

1. This action is brought under 42 U.S.C. §1983 for deprivation of Plaintiff's civil rights under the Fourteenth and Fourth Amendments to the U.S. Constitution.

JURISDICTION

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331.

PARTIES

3. Plaintiff Steven Wiggs is an adult individual with an address for service as captioned above, who at all times relevant to this action was a duly-elected Pennsylvania State Constable.

4. Defendant Donald Foley is an adult individual with an address for service as captioned above, who at all times relevant to this action was a Pennsylvania State Trooper acting under color of state law.

5. Defendant David Shearn is an adult individual with an address for service as captioned above, who at all times relevant to this action was a Pennsylvania State Police Corporal acting under color of state law.

FACTUAL ALLEGATIONS

6. On January 13, 2018, Plaintiff was cited by the Pennsylvania State Police for an alleged motor vehicle violation pursuant to 75 Pa.C.S. §4571(b)(1).

7. On April 19, 2018, Plaintiff arrived at the Philadelphia Municipal Court Traffic Division to appear at a hearing regarding the above-referenced citation.

8. Plaintiff was wearing attire identifying himself as a Pennsylvania State Constable and carrying a firearm as legally authorized pursuant to 18 Pa.C.S. §6106(b)(1).

9. As required by the security policies of the Philadelphia Municipal Court Traffic Division, Plaintiff surrendered his firearm to the Sheriff's Deputies at the secured entrance to the court building for storage until he exited the building.

10. Plaintiff then attended the hearing in his motor vehicle violation case and testified in his own defense, during which time he repeatedly identified himself to the Traffic Division Hearing Officer as a Pennsylvania State Constable.

11. On or about July 13, 2018, Defendant Foley prepared and submitted an Affidavit of Probable Cause to the Philadelphia District Attorney's Office ("DAO") seeking a warrant for the Plaintiff's arrest.

12. The Affidavit prepared and submitted by Defendant Foley contained numerous false statements of fact and misrepresentations of the law supporting the basis for Defendant Foley's allegations against the Plaintiff, including, *inter alia*, that Plaintiff

had falsely represented himself as a police officer at the hearing in his case, and that Plaintiff was not legally authorized to carry a firearm, despite the clear mandate of the permitting exception enumerated at 18 Pa.C.S. §6106(b)(1).

13. A warrant for Plaintiff's arrest was issued on the basis of Defendant Foley's Affidavit, and the Plaintiff was arrested on July 18, 2018, charged with violations of the Pennsylvania Uniform Firearms Act ("UFA") and Impersonating a Public Servant, and had his firearm confiscated.

14. At the Preliminary Hearing in that case – Philadelphia Municipal Court docket number MC-51-CR-0018498-2018 (the "First Case") – the charge of Impersonating a Public Servant was dismissed for lack of evidence, but the charges alleging violations of the UFA were held for court.

15. At the Preliminary Hearing in the First Case, Defendant Foley falsely testified that Plaintiff was not legally authorized to carry a firearm, despite the clear mandate of the permitting exception enumerated at 18 Pa.C.S. §6106(b)(1).

16. On September 23, 2018, Plaintiff received notice from a Constable who provided security officers for the Wyoming Area School District in Northeast Pennsylvania – for whom Plaintiff had previously worked and intended to again work in the future – that he was being suspended from his employment and/or contract to work with the School District due to the pending charges against him.

17. A Pre-Trial Conference in the First Case was scheduled for September 27, 2018, and Plaintiff arrived at the Stout Center for Criminal Justice in Philadelphia on that day wearing a firearm – again, as authorized by Pennsylvania law – and checked it with

the Sheriff's Deputies at the secured entrance to the court building for storage until he exited the building.

18. Upon the conclusion of the Pre-Trial Conference, as Plaintiff was exiting the building, Defendant Shearn arrested the Plaintiff or caused the Plaintiff to be arrested once again, took him into custody, and confiscated his vehicle and firearm.

19. Defendant Shearn thereafter submitted an Arrest Report to the DAO, seeking criminal charges against the Plaintiff, which again contained multiple false statements of fact and misrepresentations of the law supporting the basis for Defendant Shearn's allegations against the Plaintiff, including, *inter alia*, that Plaintiff had falsely represented himself as a police officer and was not legally authorized to carry a firearm, despite the clear mandate of the permitting exception enumerated at 18 Pa.C.S. §6106(b)(1).

20. Plaintiff was again charged, on the basis of Defendant Shearn's Affidavit, with violations of the UFA and Impersonating a Public Servant under Philadelphia Municipal Court docket number MC-51-CR-0024936-2018 (the "Second Case").

21. On January 17, 2019, Judge Scott DiClaudio of the Philadelphia Court of Common Pleas found there was insufficient evidence to establish even a *prima facie* case against the Plaintiff in the First Case, and the remaining charges against the Plaintiff were Quashed under docket number CP-51-CR-0005916-2018.

22. On June 18, 2019, the DAO determined there was no ongoing basis in law or fact to pursue charges in the Second Case and *nolle prossed* all remaining charges before Judge Shanese Johnson in the Philadelphia Court of Common Pleas under docket number CP-51-CR-0008072-2018.

CLAIMS FOR RELIEF

COUNT I

Steven Wiggs v. Donald Foley
42 U.S.C. §1983 – Malicious Prosecution and Wrongful Arrest

23. Plaintiff hereby incorporates all preceding paragraphs as though same were set forth at length hereafter.

24. Defendant Donald Foley was at all times relevant to this action acting under color of state law as a Pennsylvania State Police Trooper.

25. Defendant's willful, wanton, and malicious conduct consisted of the following, without limitation:

- a. Preparing and submitting a falsified Affidavit of Probable Cause to the Philadelphia District Attorney's Office in an effort to secure the arrest, charging, and prosecution of the Plaintiff;
- b. Providing false testimony at the Preliminary Hearing in the First Case against the Plaintiff that the Plaintiff was not legally authorized to carry a firearm; and,
- c. Providing false testimony at the Preliminary Hearing in the First Case against the Plaintiff that the Plaintiff was not excepted from liability under 18 Pa.C.S. §6108 because he did not have insurance, despite the clear mandate of 18 Pa.C.S. §6106(b)(1).

26. Defendant's conduct violated Plaintiff's civil rights as established by the Fourth Amendment to the U.S. Constitution.

27. As a direct and proximate result of Defendant's willful, wanton, and malicious conduct, Plaintiff was unreasonably seized, deprived of his liberty and property, compelled to hire an attorney at his personal expense, made to endure the rigors of protracted criminal prosecution, and suspended from his usual employment, resulting in significant lost income.

COUNT II
Steven Wiggs v. David Shearn
42 U.S.C. §1983 – Malicious Prosecution and Wrongful Arrest

28. Plaintiff hereby incorporates all preceding paragraphs as though same were set forth at length hereafter.

29. Defendant David Shearn was at all times relevant to this action acting under color of state law as a Pennsylvania State Police Corporal.

30. Defendant's willful, wanton, and malicious conduct consisted of the following, without limitation:

- a. Preparing and submitting a falsified Arrest Report to the Philadelphia District Attorney's Office in an effort to secure the charging and prosecution of the Plaintiff.

31. Defendant's conduct violated Plaintiff's civil rights as established by the Fourth Amendment to the U.S. Constitution.

32. As a direct and proximate result of Defendant's willful, wanton, and malicious conduct, Plaintiff was unreasonably seized, deprived of his liberty and property, compelled to hire an attorney at his personal expense, made to endure the rigors of protracted criminal prosecution, and suspended from his usual employment, resulting in significant lost income.

COUNT III
Steven Wiggs v. Donald Foley and David Shearn
42 U.S.C. §1983 – Conspiracy to Commit Malicious Prosecution and Wrongful Arrest

33. Plaintiff hereby incorporates all preceding paragraphs as though same were set forth at length hereafter.

34. By and through their acts and omissions, as previously described, Defendants acted in concert with each other in a conspiracy to maliciously prosecute and wrongfully

arrest the Plaintiff in violation of his right to be free from unreasonable seizure as established by the Fourth Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests:

- A. Compensatory damages;
- B. Punitive damages;
- C. Attorney's fees; and,
- D. Such other relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Steven Wiggs hereby demands a trial by jury in this action of all issues so triable.

Respectfully Submitted,

By: 

Benjamin J. Simmons, Esq.
I.D. No. 314855
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Philadelphia, PA 19148
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